

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

FAIRMONT COMMUNITY HOSPITAL

Employer

and

TEAMSTERS LOCAL NO. 120, affiliated with
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS

Petitioner

Case 18-RC-16440

DECISION AND ORDER

On March 22, 1999, Petitioner filed the petition herein.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in connection with this proceeding to the undersigned. Upon an administrative investigation, the undersigned finds:

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.¹

2. The labor organization involved claims to represent certain employees of the Employer.

3. The petition seeks an election in a unit of all full-time and regular part-time radiology and lab personnel employed by the Employer at its 835 Johnson Street,

¹ The Employer, Fairmont Community Hospital, is a Minnesota corporation engaged in the operation of an acute-care hospital in Fairmont, Minnesota. The Employer annually grosses revenues in excess of \$1,000,000, and it annually purchases goods or services valued in excess of \$50,000 directly from suppliers located outside the State of Minnesota.

Fairmont, Minnesota facility, excluding all other employees, office clerical employees, guards and supervisors as defined in the Act, as amended.

The investigation revealed that both parties agree that the Employer is an acute-care hospital. The Employer contends that the petition must be dismissed, because the unit is inappropriate under the Board's health care rules. More specifically, the Employer contends that the Petitioner is not seeking to represent all currently unrepresented technical employees; that even if it were, the only appropriate unit would be all technical employees employed by the Employer at its hospital, including licensed practical nurses (LPNs) currently represented by the Minnesota Licensed Practical Nurses Association (MLPNA); and that an existing contract between the MLPNA and Employer bars further processing of the petition.

Petitioner concedes that it is not seeking to represent all currently unrepresented technical employees. In fact, Petitioner has made clear that it is only seeking to represent the Employer's radiology employees.² Petitioner contends that radiology personnel have a separate community of interest from other technical employees; that pre-existing, non-conforming units already exist, which constitutes an "extraordinary circumstance" within the meaning of the Board's health rules; and that, because of bargaining history, unless the radiology employees are allowed representation by Petitioner, they will be unable to gain representation.

Because Petitioner concedes that it is not seeking a unit consisting of all currently unrepresented technical employees employed by the Employer, I conclude

² Although the petition filed by Petitioner seeks a unit of "[a]ll full-time and regular part-time radiology and lab personnel," Petitioner subsequently clarified in two written submissions to the Region, both dated March 29, 1999, that the only classifications sought were the radiology employees, and not the laboratory personnel.

that no hearing is necessary, and that the instant petition should be dismissed. The basis for my conclusion is the failure of Petitioner to comply with the Board's health care rule. The rule states:

(a) . . . Except in extraordinary circumstances and in circumstances in which there are existing non-conforming units, the following shall be appropriate units, and the only appropriate units, for petitions. . .

- (1) All registered nurses.
- (2) All physicians.
- (3) All professionals except for registered nurses and physicians.
- (4) All technical employees.
- (5) All skilled maintenance employees.
- (6) All business office clerical employees.
- (7) All guards.
- (8) All nonprofessional employees except for technical employees, skilled maintenance employees, business office clerical employees, and guards. . . .

(c) Where there are existing non-conforming units in acute care hospitals, and a petition for additional units is filed . . . the Board shall find appropriate only units which comport, insofar as practicable, with the appropriate unit set forth in paragraph (a) of this section.

54 Fed. Reg. at 16347, 29 C.F.R. at Sec. 103.30(a).

Petitioner's contention that radiology personnel have a separate community of interest from other technical employees must be rejected. The purpose of the Board's health care rules is to announce presumptively appropriate units and avoid inquiry into community-of-interest factors. Petitioner's further contention that the existence of non-conforming units is itself "extraordinary circumstances" within the meaning of Section 103.30(a) is also rejected. Were I to accept Petitioner's argument, the "extraordinary circumstances" exception would eviscerate the health care rule. Finally, Petitioner's argument that the radiology employees will never be able to be represented if the

petition is dismissed is without merit. The basis for my dismissal is not because I accept the Employer's position that the only appropriate unit must include LPNs.³ Rather, it is because Petitioner concedes that it is not seeking to represent all currently unrepresented technical employees. St. John's Hospital, 307 NLRB 767 (1992).

IT IS HEREBY ORDERED that the petition herein is dismissed.⁴

Dated at Minneapolis, Minnesota, this 12th day of April, 1999.

/s/ Ronald M. Sharp

Ronald M. Sharp, Regional Director
Eighteenth Region
National Labor Relations Board

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³ The question whether the only appropriate unit should include all technical employees and LPNs would be appropriate for hearing, and I do not, by this decision, suggest either acceptance or rejection of the Employer's position that LPNs must be included in any technical employee unit.

⁴ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **April 26, 1999**.